Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 68.4 of the Commission's Rules Governing Hearing Aid-Compatible Telephones	)	WT Docket No. 01-309
	)	
	)	
T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3)(i) of the Commission's Rules	)	

T-MOBILE USA, INC.
PETITION FOR WAIVER OF SECTION 20.19(C)(3)
OF THE COMMISSION'S RULES

T-Mobile USA, Inc. ("T-Mobile"), pursuant to Section 1.3 of the Commission's rules,[1] hereby requests a waiver of Section 20.19(c)(3) of the Commission's rules.[2] T-Mobile is fully committed to offering its customers handsets that are compatible with hearing aids as the FCC has required. In an effort to meet this commitment, T-Mobile has dedicated significant resources to help develop industry standards to ensure that all customers, including those with hearing disabilities, have access to wireless services. To provide its own hearing-impaired customers with these services, T-Mobile has been seeking initially to procure from its vendors four handsets that operate exclusively in the 1900 MHz band when in the United States and that were believed to provide a U3 rating under the American National Standards Institute ("ANSI") standard, ANSI C63.19. Due to unique and unusual factual circumstances beyond T-Mobile's control, however, so far only two of these handsets have been found to comply with the FCC's

1 47 C.F.R. § 1.3.

2 *Id.*, § 20.19(c)(3)(i)(A).

hearing aid compatibility ("HAC") standard and have received grants of certification. While T-Mobile, in cooperation with its vendors, continues to take action to ensure its customers will have access to several HAC-compliant handsets, at this juncture T-Mobile believes that additional time may be needed to test and deploy such handsets. This additional time would help ensure that HAC-compliant handsets are available to our stores and that other collateral requirements are met, including product labeling and merchandising and training of our retail customer care representatives.

Accordingly, given the Commission's deadline, and out of an abundance of caution, T-Mobile respectfully requests that the Commission waive the requirements of Section 20.19(c)(3) of its rules for a *de minimis* period of 60 days from the September 16 deadline to allow T-Mobile adequate time to deploy 1900 MHz HAC-compliant solutions. Additionally, we respectfully request relief from 20.19(c)(3) consistent with the waiver request filed by Cingular Wireless, LLC.[3]

I. BACKGROUND

A. T-Mobile Network

T-Mobile, with more than 19 million subscribers nationwide, operates an all digital, Global System for Mobile ("GSM") network on Personal Communications Service ("PCS") spectrum in the 1900 MHz band. Unlike Cingular, the other nationwide wireless provider using GSM technology, T-Mobile's license holdings are only in the 1900 MHz band. T-Mobile is just beginning to offer its customers phones that also include the 850 MHz band, which will enable them to receive expanded geographic coverage through roaming agreements that T-Mobile executes with various other GSM carriers.

[3] Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, WT Docket No. 01-309 (filed Aug. 5, 2005) ("Cingular Waiver Request").

B. Hearing Aid Compatibility Requirement

In 2003, the Commission adopted the ANSI C63.19 standard as the applicable criteria for compatibility of digital wireless phones with hearing aids.[4] In particular, the Commission required wireless providers to make available to consumers digital wireless phones that meet a U3 rating under the ANSI standard.[5] As the Commission is aware, at the time of incorporation of this standard into the Commission's rules, there was significant debate regarding the standard's validity.[6] In addition, earlier this year, significant concerns were raised regarding the application of this standard to the 850 MHz band.[7] Despite these concerns, in June of this year, the Commission reaffirmed the ANSI standard as the appropriate standard for HAC compliance and modified these requirements so as to require all Tier I carriers to make available four U3-rated or higher handsets by September 16, 2005.[8]

C. Waiver Standard

Pursuant to Section 1.3 of the Commission's rules, the Commission may waive any

---

[4] *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, FCC 03-168, ¶ 55 (Aug. 14, 2003).

[5] The ANSI rating for a particular digital wireless phone is based on the RF emission level of that handset, with U1 being the highest emissions and U4 the lowest emissions. To determine whether a particular digital wireless phone will not interfere with a particular hearing aid, the immunity rating of the hearing aid is added to the emissions rating of the wireless phone.

[6] *See, e.g.*, Sprint PCS Comments, WT Docket No. 01-309, 14-16 (filed Jan. 11, 2002); Sony Ericsson *Ex Parte* Presentation, WT Docket No. 01-309, at 4 (Mar. 13, 2003); Nokia *Ex Parte* Presentation, WT Docket No. 01-309, at 9 (Apr. 10, 2003).

[7] *See* Sony Ericsson Mobile Communications, Nokia, and Motorola *Ex Parte* Presentation, WT Docket No. 01-309, at 1-2 (Apr. 29, 2005).

[8] *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 05-122 (June 21, 2005) ("*HAC Order on Reconsideration*").

provision of its rules, in whole or in part, if good cause is shown.[9] Moreover, under Section 1.925, the Commission will grant a request for waiver if in view of unique or unusual factual circumstances, application of the rule would be contrary to the public interest or the applicant has no reasonable alternative.[10]

T-Mobile has worked diligently to comply with the FCC's hearing aid compatibility requirements. T-Mobile has been directly and significantly involved in industry efforts to develop HAC-compliant phones. In fact, T-Mobile has chaired the technical "Incubator" (AISP.4-HAC) within the Alliance for Telecommunications Industry Solutions ("ATIS") since its inception in 2003 - working to develop appropriate HAC standards and to review and consider possible changes to those standards.[11] The Incubator has included participation from interested stakeholders including representatives from the hearing-impaired community, hearing aid manufacturers, consumer advocacy groups, wireless handset manufacturers, and wireless carriers. In addition, T-Mobile is an active participant in the Incubator's Working Group – 9, which was established to explore 850 MHz and higher power challenges with regard to GSM handsets. These cooperative efforts have resulted in significant advancements in the development of HAC to date, and the Incubator continues to work with the Commission and the various stakeholders to further develop and refine appropriate standards.

In addition to its standards involvement, T-Mobile has worked with its vendors to identify four models of phones at 1900 MHz that would comply with the Commission's

---

9 47 C.F.R. § 1.3.

10 *Id.*, § 1.925.

11 ATIS is a technical planning and standards development organization accredited by ANSI and committed to rapidly developing and promoting technical and operational standards for communication and related information technologies worldwide using a pragmatic, flexible, and open approach.

requirements of a U3 rating by September 16, 2005. Until recently, however, there was a significant degree of uncertainty regarding how the FCC's HAC requirements would be applied to manufacturers and wireless providers. Indeed, numerous outstanding questions about HAC implementation were resolved only this past June.[12] Despite this uncertainty, T-Mobile and its vendors worked to the best of their ability to test and develop the four identified handsets. Based on several preliminary tests they performed, the manufacturers of each of these 1900 MHz phones informed T-Mobile that they expected their phones to meet the U3 rating.[13] Completely unexpectedly at the end of last week, Motorola, the manufacturer of two of the four identified handsets, informed T-Mobile that both their models failed certification when submitted to a Telecommunications Certification Body ("TCB") and tested at maximum authorized power. These failures have called into question whether other 1900 MHz handsets will be able to meet the requisite specification.

Immediately upon discovering the failure of these two handsets, T-Mobile notified the FCC and with its vendors initiated an intense effort to identify additional models that may be

---

[12] In its *Order on Reconsideration*, the FCC modified several aspects of its prior Hearing Aid Compatibility Order, including the number of handsets that Tier I carriers must make available to the public by September 16, 2005, the *de minimis* exception, and the states' role with respect to the technical standards for hearing aid compatibility. *See generally HAC Order on Reconsideration*.

[13] These original tests for at least two of the models were performed using the rated maximum power specified by T-Mobile – *i.e.*, the highest power at which the handsets would operate in actual use. In T-Mobile's network phones will operate at maximum rated power only in very limited circumstances. However, in May, FCC staff clarified at a training session for TCBs that handsets should be tested at the maximum authorized power shown on the grant of equipment authorization rather than the rated power specified by the carrier. *See* Hearing Aid Compatibility – RF Emissions Measurement TCB Review Guidance, Presentation by Martin Perrine, Office of Engineering and Technology, Federal Communications Commission, 19 (May 12, 2005) ("Maximum power is used").

able to meet the U3 rating.[14] To date, T-Mobile has identified two 1900 MHz models that have been certified by a TCB and two other models that Motorola reports have passed laboratory HAC testing and are awaiting certification by a TCB.[15] However, it is still unclear whether these phones can be promptly incorporated into T-Mobile's inventory and distribution in a timely manner.[16] Moreover, the ability of two of these handsets to comply remains uncertain until certifications are issued. Thus, although T-Mobile remains committed to providing at least four HAC-compliant 1900 MHz handsets, it is highly unlikely that the final testing and distribution of all of these handsets will be complete by the September 16 deadline.

Also, if T-Mobile cannot satisfy the four handset requirement with 1900 MHz phones in time, T-Mobile may need to deploy HAC-compliant handsets utilizing a dual or quad-band solution as suggested by Cingular.[17] Indeed, T-Mobile has begun to increase its footprint by utilizing 850 MHz roaming agreements. As such, a viable multi-band HAC solution is critical for GSM carriers, including T-Mobile. Accordingly, by this filing, T-Mobile also urges the Commission to grant Cingular's request for waiver and clarify that multi-band phones may be, on an interim basis, HAC-certified based solely on a U3 rating in the 1900 MHz band and be marketed as HAC-certified by all GSM carriers. Such a decision is in the public interest, as it

---

[14] T-Mobile *Ex Parte* Presentation, WT Docket No. 01-309 (Aug. 19, 2005).

[15] T-Mobile's high-end handset, the Blackberry 7230, has already received HAC certification from a TCB as has the Samsung x495H. With respect to one of the failing models, the discrepancy between the TCB-assessed HAC rating and the previous rating is apparently due to a misunderstanding of the testing methodology that would be used by the TCB (*i.e.*, maximum power versus the maximum rated power specified by the carrier).

[16] Even with the relief requested herein, T-Mobile will still be forced to shortcut much of its own product launch process in order to get these handsets into distribution for use on its network.

[17] Thus, T-Mobile's ability to get to a four handset solution may depend on the outcome of Cingular's Waiver Request.

would provide consumers with greater flexibility and choice with respect to the capabilities of their handset.

II. A LIMITED WAIVER TO PROVIDE ADDITIONAL TIME TO TEST AND MAKE AVAILABLE HANDSETS THAT MEET THE U3 RATING AT 1900 MHZ IS WARRANTED; IN ADDITION, RELIEF PURSUANT TO THE CINGULAR REQUEST IS APPROPRIATE FOR A MULTI-BAND GSM SOLUTION.

As indicated above, a waiver of the Commission's rules is warranted if good cause is shown. In the current instance, T-Mobile finds itself in the unexpected position as a 1900 MHz GSM carrier, despite its best efforts to identify and deploy four U3-compliant handsets in a short timeframe, of potentially being unable to satisfy the Section 20.19(c)(3) requirements. T-Mobile asserts that these unique circumstances represent good cause under the Commission's rules and demonstrate that strict application of Section 20.19(c)(3)(i)(A) would be contrary to the public interest.

It is indisputable that GSM is an integral part of the nation's wireless infrastructure, providing significant benefits to the public. Moreover, T-Mobile has been, is now, and will continue to be an industry leader in developing and deploying services that are designed to promote the public interest, such as priority access, E-911, and, as described in detail throughout this pleading, hearing aid compatibility. Despite best efforts and due to unusual circumstances beyond T-Mobile's control, a number of the 1900 MHz handsets T-Mobile intended to use as HAC-compliant handsets failed to meet the requisite U3 standard when recently tested at maximum authorized power following a clarification by the FCC of the testing requirements.[18] As a result, T-Mobile's preparations for making its planned handsets available to its hearing-impaired customers as HAC-compliant handsets have been significantly undermined.

---

[18] T-Mobile only learned of these failures on August 18, 2005. *See* T-Mobile *Ex Parte* Presentation, WT Docket No. 01-309 (Aug. 19, 2005).

Although T-Mobile is acting expeditiously in the wake of these recent handset failures to identify and test alternative 1900 MHz handsets that may comply, it is likely that T-Mobile will be unable to make four U3-compliant handsets available to its customers by September 16, 2005. Approval efforts for these alternative handsets is underway, but time is very short to satisfy everything that needs to be done to ensure T-Mobile's stores not only have the equipment available but also have the collateral materials in place to satisfy customers for designated handsets. Even if T-Mobile is able to obtain additional handsets that are found to meet the U3 standard, the company must still assimilate these handsets into its network and develop and deploy marketing and informational material on each of the handsets and their capabilities. T-Mobile must also make handsets to more than 1100 retail outlets available and initiate employee training so that all of its sales personnel are fully informed on the capabilities of each of these phones and can adequately assist hearing disabled customers with obtaining the most appropriate handset. Notably, T-Mobile has made substantial progress with respect to the distribution and marketing of the originally planned 1900 MHz handsets. Accordingly, the unexpected failure of the two handsets represented a profound setback to our anticipated ability to meet the September 16 deadline, and we are relying on our vendors for alternatives in a very limited timeframe and under very fluid testing circumstances.

In short, the execution of these many activities, even when pursued on a very expedited schedule, takes time, and needs to be accomplished in an effective manner for the benefit of our customers. While T-Mobile is fully committed to identifying, testing, and deploying these products as rapidly as possible, the practicality of the matter is that four HAC-compliant handsets may not be available to T-Mobile stores until after the September 16 deadline. Accordingly, a de minimis 60-day waiver of the September 16, 2005, deadline to make available

to the public four handsets with a U3 rating is warranted.

T-Mobile's ability to deploy HAC-compliant phones may also be dependent upon the FCC's action with respect to the Cingular waiver for GSM phones that operate in both the 1900 MHz and 850 MHz bands. Multi-band phones provide customers with greater flexibility to access not only T-Mobile's network, but also the networks of T-Mobile's roaming partners, thereby enhancing coverage.[19] T-Mobile wants to provide for greater coverage in the longer term by utilizing multi-band phones that roam on 850 MHz networks.[20] The HAC solution for the 850 MHz band, however, recently has demonstrated significant problems, as Cingular asserts in its waiver request.[21] Accordingly, T-Mobile supports Cingular's request to allow quad or multi-band phones that operate in both the 850 and 1900 MHz bands to demonstrate compliance under a waiver on the basis of the HAC rating applied to 1900 MHz performance.

---

[19] In addition to the 850 MHz and 1900 MHz bands that may be used in the United States, quad-band phones include capabilities to operate in the 900 MHz and 1800 MHz bands outside of the United States.

[20] T-Mobile traditionally has not offered phones with 850 MHz capability since its own network is exclusively 1900 MHz and there was very little 850 MHz GSM service available from potential roaming partners. The latter situation is changing as Cingular is completing deployment of GSM throughout its network and many of its 850 MHz roaming partners have or are converting to GSM as well. Accordingly, T-Mobile is pursuing an aggressive campaign to expand its service footprint by providing roaming opportunities for its customers on 850 MHz GSM networks in geographic areas where T-Mobile's own 1900 MHz network does not extend. *See, e.g.,* Centennial Communications Announces New Long-Term Roaming Agreement with T-Mobile USA, Press Release dated Aug. 26, 2005.

[21] To date, the validity of the ANSI standard, at least as to the 850 MHz band, has been called into question as testing has shown that GSM phones meeting the M1 rating in the 850 MHz band have proven often to be compatible with many hearing aids. Accordingly, changes to the HAC testing methodology need to be made to ensure that it results in repeatable, consistent, scientifically valid results that predict what will happen in the real world. See Cingular Waiver Request; ATIS Ex Parte Presentation, WT Docket No. 01-309 (Aug. 1, 2005).

III. CONCLUSION

For the foregoing reasons, T-Mobile requests a 60 day waiver of Section 20.19(c)(3) so as to allow it additional time to make available to the public at least four 1900 MHz handsets meeting a U3 or higher interference rating. T-Mobile also respectfully requests relief from Section 20.19(c)(3) consistent with the waiver filed by Cingular in order that handsets containing both 850 and 1900 MHz capability may be HAC-certified on the basis of the 1900 MHz rating. T-Mobile will report to the FCC on its status of compliance within 30 days of a waiver grant. Finally, T-Mobile will continue to work with stakeholder groups to resolve issues with the current GSM HAC standard.

Respectfully submitted,

By: *(electronically filed)*
Thomas J. Sugrue, VP, Government Affairs
Kathleen O'Brien Ham, Managing Director,
Federal Regulatory Affairs
Harold Salters, Director, Federal Regulatory Affairs
Shellie Blakeney, Senior Counsel,
Federal Regulatory Affairs

T-Mobile USA, Inc.
401 9th Street, NW
Suite 550
Washington, DC 20004

Dated: August 26, 2005